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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
FRANK HACKER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCEB No. 81-4

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a Department of Ecology decision on a groundwater application came before the Pollution Control Hearings Board, Nat W. Washington, presiding, and David Akana and Gayle Rothrock, Members, at a formal hearing in Lacey, Washington, on June 19, 1981. Appellant Frank Hacker represented himself; respondent Department of Ecology was represented by Wick Dufford, Assistant Attorney General. Court Reporter Kim Otis recorded the proceedings.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 The appellant applied on July 25, 1980, to appropriate 200 gallons
4 per minute from five wells for the irrigation of 80 acres, domestic
5 supply, and stock watering. The proposed appropriation calls for the
6 wells to be located in close proximity to an unnamed intermittent
7 stream which flows out of Brown Lake and contributes to the flow of
8 Johnson Creek. Appellant's property comprises about 670 acres located
9 about five miles northwest of Omak in sections 7 and 8, T. 34 N, R. 26
10 E.W.M., Okanogan County.

11 The Department of Ecology denied appellant's application insofar
12 as it applied to appropriation of water for irrigation purposes, but
13 approved it for the appropriation of 20 gallons per minute up to 2.7
14 acre feet per year for domestic supply and stock watering purposes by
15 means of two wells located at opposite ends of the valley transecting
16 appellant's property. It is from this denial that appellant appeals.

17 II

18 The drainage basin which supports Brown Lake, the unnamed
19 intermittent stream, and the aquifer which would be tapped by the
20 wells is only about four square miles in area and is supported solely
21 by natural precipitation which averages about ten to twelve inches per
22 year. Much of this precipitation evaporates, transpires or runs off.
23 Some precipitation supplies water to Brown Lake where direct
24 evaporation takes about 36 inches per year from the 52 acre surface of
25 the lake. There are two small ponds in section 8 which are sustained
26 by precipitation and which along with Brown Lake contribute by
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1 percolation to the water in the aquifer which would be tapped by the
2 wells. The groundwater in the aquifer together with the small
3 intermittent stream it supports ends up in the lower lying Johnson
4 Creek Valley and contributes to the available water supply in that
5 aquifer and to Johnson Creek which is supported by it.

6 III

7 Johnson Creek has a long history of water shortage which
8 culminated in Okanogan County Superior Court adjudication decree No.
9 6126 issued in 1926. The Creek and its tributaries, including the
10 small intermittent stream involved here were closed to further
11 consumptive appropriation by WAC 173-549-050 which was adopted in
12 1976. Domestic and stock water uses were exempt from the closure.

13 IV

14 Any Conclusion of Law which should be deemed a Finding of Fact is
15 hereby adopted as such.

16 From these Findings the Board comes to these

17 CONCLUSIONS OF LAW

18 I

19 RCW 90.44.020 provides that the provisions of chapter 90.03 RCW
20 are extended to cover the appropriation and beneficial use of
21 groundwater. RCW 90.03.290 provides that water may be appropriated
22 for beneficial use if (1) there is water available; (2) if the
23 proposed appropriation will not impair existing rights; and (3) will
24 not be detrimental to the public interest.

25 II

26 The appropriation for the beneficial use of irrigation in the
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1 amount requested by appellant is not available, would impair existing
2 rights and would be contrary to the public interest as expressed in
3 chapter 173-549 WAC; however, there is sufficient water available at
4 the rate of 20 gallons per minute for domestic use up to 1 acre foot
5 per year and for stock watering use up to 1.7 acre feet per year.
6 Both of these uses are beneficial. This amount would not materially
7 impair existing rights and would not be detrimental to the public
8 interest as expressed by chapter 173-549 WAC.

9 III

10 The decision of the Department of Ecology should be affirmed.

11 IV

12 Any Finding of Fact which should be deemed a Conclusion of Law is
13 hereby adopted as such.

14 From these Conclusions the Board enters this
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ORDER

The order of the Department of Ecology which denies in part and approves in part appellant's application to appropriate groundwaters is sustained.

DATED this 10th day of August, 1981.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington
NAT W. WASHINGTON, Chairman

David Akana
DAVID AKANA, Member

Gayle Rothrock
GAYLE ROTHROCK, Member